

1 **ROBISON D. HARLEY, JR. SBN: 68984**
2 **Attorney at Law**
3 **825 N. Ross Street**
4 **Santa Ana California 92701**
5 **Tele: (714) 972-8141**
6 **Facsimile: (714) 972-8107**
7 **e-mail: rob.harley@sbcglobal.net**

8 **Attorney for Defendant**
9 **JAGMOHAN S. DHILLON**

10 **UNITED STATES DISTRICT COURT**
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
12 **SOUTHERN DISTRICT**

13 **UNITED STATES OF AMERICA**

14 **Plaintiff,**

15 **vs.**

16 **JAGMOHAN S. DHILLON,**

17 **Defendant.**

18 **CASE NO: SA CR 08-00223-AG**

19 **DEFENDANT'S CORRECTED**
20 **SENTENCING POSITION; POINTS**
21 **AND AUTHORITIES IN SUPPORT**
22 **THEREOF; EXHIBITS A, B-1, B-2;**
23 **B-3, B-4, B-5, C, and D**

24 **Sentencing Date: 22 August 2011**
25 **Time: 1:30 p.m.**
26 **Judge: Guilford**

27 Pursuant to Rule 32 of the Federal Rules of Criminal Procedure the defendant,
28 Jagmohan S. Dhillon, by and through his counsel of record, Robison D. Harley Jr.
hereby submits his sentencing position.

Dated: August 8, 2011

Respectfully submitted

/s/ Robison D. Harley Jr.
Robison D. Harley
Attorney for the Defendant
JAGMOHAN S. DHILLON

1 **1. INTRODUCTION**

2 The parties entered into a plea agreement under Federal Rule of Criminal
3 Procedure 11(c)(1)(B). On March 3, 2011, Mr. Dhillon pled guilty to count I of the
4 Indictment alleging that he conspired to distribute and possessed with intent to
5 distribute more than 5 kilograms of cocaine in violation of 21 U.S.C. § 846.

6 **2. THE PRESENTENCE REPORT CONTAINS SEVERAL FACTUAL**
7 **ERRORS**

8 Pursuant to Section 6A1.2 of the Sentencing Commission Guidelines, and Rule
9 32(e) of Fed. R. Crim. P., Mr. Dhillon was provided with a copy of the pre sentencing
10 report ("PSR"). The defendant has the following factual objections or corrections to
11 the pre sentence report.

- 12 a. The defendant was never arrested by the Modesto Police Department,
13 never charged with selling liquor to a minor and never convicted of any
14 charges in Stanislaus County Superior Court as alleged in ¶ 44 of the
15 PSR.
- 16 b. The defendant was never arrested by the Royal Canadian Mounted
17 Police, was never charged with any crime and was never convicted of any
18 crime in Canada as alleged in ¶ 45 of the PSR. The defendant did not
19 immigrate from India to Canada until November 3, 1997.
- 20 c. The defendant was never arrested by Modesto Police Department, never
21 charged with selling liquor to a minor, and never convicted of any
22 charges in Stanislaus County Superior Court as alleged in ¶ 46 of the
23 PSR.
- 24 d. The defendant was never arrested by the Royal Canadian Mounted
25 Police, was never charged with any crime and was never convicted of any
26 crime in Canada as alleged in ¶ 53 of the PSR. The defendant did not
27 immigrate from India to Canada until November 3, 1997.
- 28 e. The defendant does not have any Alien Registration Number ("ARN")

1 and has never resided legally in the United States as alleged in ¶ 55 of the
2 PSR.

3 f. The defendant does not have a social security number of 626-62-9659,
4 does not have abn alien registration number of A89853 548, does not
5 have a California drivers license number B3574651 and does not have a
6 CII # A10543009 as alleged on page 2 of the PSR. The defendant has
7 never had any California drivers license nor has he ever had an alien
8 registration number.

9 **3. OFFENSE LEVEL AND CRIMINAL HISTORY**

10 The defendant agrees with the probation officers calculation of a total offense
11 level of 24 with a criminal history category of one puts defendant in a guideline
12 sentencing range of 51 to 63 months. The defense also agrees with the sentence
13 recommendation of the probation officer and the AUSA to the low-end of the guideline
14 range of 51 months.

15 **4. A DOWNWARD VARIANCE IS WARRANTED BASED ON THE** 16 **DEFENDANTS POST-OFFENSE REHABILITATION**

17 **AUTHORITIES**

18 The Ninth Circuit has expressly held, along with other circuits, that post-
19 sentencing rehabilitative efforts are a proper basis for downward departure from the
20 Sentencing Guidelines upon re-sentencing. *United States v. Green*, 152 F.3d 1202,
21 1206-08 (9th Cir. 1998). A founded prospect of meaningful rehabilitation remains a
22 permissible basis for a variant sentence under the now advisory guidelines. See 18
23 U.S.C. § 3553(a)(2)(C), *United States v. Martin*, 520 F.3d 87, 93-94 (1st Cir. 2008).

24 A departure for post offense rehabilitation reflects that, unlike some other
25 defendants, Dhillon has fundamentally changed since his offense, poses a lesser risk
26 to the community and does not require incapacitation for too long. *United States v.*
27 *Clay*, 483 F.3d 739, 745 (11th Cir. 2007), A district court properly sentences a
28 defendant below the guideline range based on her rehabilitation efforts, as evidenced

1 by her certificate of achievement while incarcerated, her shame, as reflected by a letter
 2 from a fellow inmate and her own letter to the district court, and her good character to
 3 which her friends and family attested. She had obtained numerous certificates of
 4 achievement by taking nearly every offered class at the Metropolitan Correctional
 5 Center. *United States v. Ngala*, 477 F.3d 496, 501-02 (7th Cir. 2007).

6 Here, Dhillon has shown extraordinary post offense rehabilitation not only by
 7 obtaining 45 certificates of participation in jail programs (Exh. B.) but also by
 8 receiving ten separate letters of recommendation from jail teachers (Exh. C.), a feat not
 9 normally seen by sentencing judges. Accordingly, a downward variance should be
 10 awarded based on Dhillon's post offense rehabilitation efforts.

11 **5. A DOWNWARD VARIANCE IS WARRANTED BASED ON**
 12 **DEFENDANT'S VOLUNTARY WITHDRAWAL FROM THE**
 13 **CONSPIRACY SHORTLY AFTER HE JOINED**

14 **AUTHORITIES**

15 The defendants voluntary withdrawal is a circumstance that distinguishes his
 16 conduct not only from that of all his co defendants but from the vast majority of
 17 defendants convicted of conspiracy in federal court. Where a defendant plead guilty
 18 to conspiring to distribute a large quantity of the drug ecstasy and to making a profit
 19 of \$30,000.00 from his conduct, a probation sentence was warranted even when the
 20 guideline range was 30-37 months because defendant withdrew from the conspiracy
 21 after 7 months, stopped using drugs, went to college, and rehabilitated himself. *Gall*
v. United States, 552 U.S. 38 (2007).

22 Like Gall, defendant plead guilty to conspiring to distribute a large quantity of
 23 drugs, but withdrew from the conspiracy within a day of joining and before learning
 24 of any investigation. (See Exh. A attached hereto and incorporated by reference
 25 herein). After promptly withdrawing from the conspiracy, defendant moved to British
 26 Columbia to live with his family and continued his work as a truck driver and a taxi
 27 driver to support his family. Unlike Gall, defendant made no \$30,000.00 profit,
 28 defendant never spent 7 months in the conspiracy, and defendant was duped into

1 joining the conspiracy, all factors which present a more compelling reason for a
2 downward variance than Gall. Accordingly, another reason for a downward variance
3 exists .

4 **6. CERTIFICATES, LETTERS OF RECOMMENDATION, DEFENDANT'S**
5 **STATEMENT OF ALLOCUTION**

6 a. CERTIFICATES FROM SANTA ANA COLLEGE SCHOOL OF
7 CONTINUING EDUCATION

8 Mr. Dhillon respectfully refers this Court to the High School Equivalency
9 Diploma that he received for the completion and achievement attached within Exhibit
10 B. Also, additional certificates from the Santa Ana College School of Continuing
11 Education are attached within Exhibit B.

- 12 1. Certificate of Participation: Effective Communication (30 hrs)
- 13 2. Certificate of Progress: For Exceptional Improvement in Competency-Based
14 Learning (General Education Development)
- 15 3. Certificate of Perfect Attendance in English as a Second Language Classes
16 (8/3/09 - 8/31/09)
- 17 4. Certificate of Completion: Learning Styles Workshop
- 18 5. Certificate of Participation: English as a Second Language (50 hrs)
- 19 6. Certificate of Perfect Attendance in English as a Second Language Classes
20 (September 2009)
- 21 7. Certificate of Participation: English as a Second Language (100 hrs)
- 22 8. Certificate of Perfect Attendance in English as a Second Language Classes
23 (October 2009)
- 24 9. Certificate of Participation: English as a Second Language (150 hrs)
- 25 10. Certificate of Participation: Attitudes for Success: Substance Abuse Education
26 (12 classes)
- 27 11. Certificate of Participation: Instruction in Parenting (30 hrs)
- 28 12. Certificate of Participation: Breaking Barriers (39 hrs)

- 1 13. Certificate of Participation: English as Second Language (200 hrs)
- 2 14. **High School Equivalency Certificate** (March 4, 2010)
- 3 15. Certificate of Participation: Attitudes for Success: Substance Abuse Education
- 4 (24 classes)
- 5 16. Graduate: Attitude for Success: Breaking Barriers (March 15, 2010)
- 6 17. Certificate of Participation: English as a Second Language (250 hrs)
- 7 18. Certificate of Completion: Instruction in Parenting (30 hrs)
- 8 19. Certificate of Participation: Attitudes for Success: Substance Abuse Education
- 9 (36 classes)
- 10 20. Certificate of Participation: English as a Second Language (300 hrs)
- 11 21. Certificate of Participation: Breaking Barriers (24 classes)
- 12 22. Certificate of Completion: Attitudes for Success: Recovery and Relapse
- 13 Prevention (10 classes)
- 14 23. Certificate of Completion: Computer Applications (Typing 30wpm)
- 15 24. Certificate of Completion: Effective Communication (30 hrs)
- 16 25. Certificate of Participation: Attitudes for Success: Substance Abuse Education
- 17 (47 classes)
- 18 26. Certificate of Completion: Instruction in Parenting (30 hrs)
- 19 27. Certificate of Participation: Love Your Brain Workshop
- 20 28. Certificate of Participation: Breaking Barriers (36 classes)
- 21 29. Certificate of Completion: Computer Applications (MS Word 2007)
- 22 30. Certificate of Completion: Attitudes for Success: Anger Management (12
- 23 classes)
- 24 31. Certificate of Completion: Computer Applications (MS Excel 2007)
- 25 32. Certificate of Completion: Computer Applications (MS PowerPoint 2007)
- 26 33. Certificate of Completion: Attitudes for Success: Anger and Stress Management
- 27 (10 classes)
- 28 34. Certificate of Participation: Breaking Barriers (48 classes)

- 1 35. Certificate of Completion: Computer Applications (MS Publisher 2007)
- 2 36. Certificate of Participation: Instruction in Parenting (45 hrs)
- 3 37. Certificate of Participation: Attitudes for Success: Substance Abuse Education
- 4 (72 classes)
- 5 38. Graduate of: Framework for Recovery (February 7, 2011)
- 6 39. Certificate of Participation: English as a Second Language (150 hrs)
- 7 40. Certificate of Participation: English as a Second Language (350 hrs)
- 8 41. Certificate of Participation: Breaking Barriers (60 classes)
- 9 42. Certificate of Participation: Effective Parenting (16 classes)
- 10 43. Certificate of Participation: English as a Second Language (400 hrs)
- 11 44. Certificate of Participation: Attitudes for Success: Substance Abuse (84 classes)
- 12 45. Certificate of Participation: English as a Second Language (450 hrs)

13 b. LETTERS OF RECOMMENDATION

14 Mr. Dhillon respectfully refers this Court to the letters of recommendation
15 collectively attached as Exhibit C. In summary they include:

- 16 1. Letter from his Substance Abuse Class Instructor at Santa Ana
- 17 College, Luis Martinez (July 22, 2011).
- 18 2. Letter from his Music Instructor at Santa Ana Jail, Joe Fierro (June
- 19 16, 2011).
- 20 3. Letter from his Adult Education Instructor for Completing the
- 21 GED at Santa Ana College/Jail, Lisa M. Theiss (June 23, 2011).
- 22 4. Letter from his Adult Education Instructor for Completing the
- 23 GED at Santa Ana College/Jail, Jessica M. Menchaca (May 12,
- 24 2010)
- 25 5. Letter from his E.S.L. Instructor and Attitude for Success/Breaking
- 26 Barriers Facilitator, Patricia Coyle (June 21, 2011).
- 27 6. Letter from his E.S.L. Instructor and Attitude for Success/Breaking
- 28 Barriers Facilitator, Patricia Coyle (January 26, 2011).

- 1 7. Letter from his Parenting/Effective Communication Program
- 2 Instructor, Frances Kinney (January 26, 2011).
- 3 8. Letter from his Computer Applications/Business Skills Instructor
- 4 at Santa Ana College, Leticia Quiroz (June 21, 2011).
- 5 9. Letter from his Computer Applications/Business Skills Instructor
- 6 at Santa Ana College, Leticia Quiroz (January 26, 2011).
- 7 10. Letter from his Music Instructor at Santa Ana Jail, Joe Fierro (May
- 8 13, 2010).

9 c. DEFENDANT'S LETTER OF ALLOCUTION

10 Mr. Dhillon respectfully refers this Court to his letter of allocution

11 attached as Exhibit D.

12 **CONCLUSION**

13 In arriving at a reasonable sentence as instructed by *United States v. Booker*, 543

14 U.S. 220 (2005), the Court must take into consideration the United States Sentencing

15 Guidelines, the policies of the Sentencing Reform Act of 1984, 18 U.S.C. § 3553(a)

16 and the specific facts of the case. Considering the totality of the circumstances, a

17 reasonable sentence would be the result of a downward variance in order to achieve a

18 4-level downward adjustment to a total offense level of 20 with a guideline sentencing

19 range of 33-41 months with a sentence of imprisonment at the low end of the relevant

20 guideline range. A sentence of 20 months imprisonment would be "a sentence

21 sufficient but not greater than necessary, to comply with" the purposes of federal

22 sentencing § 3553(a).

23 Dated: August 8, 2011

Respectfully submitted,

24 /S/ Robison D. Harley Jr.

25 Robison D. Harley

26 Attorney for the Defendant

27 **JAGMOHAN S. DHILLON**

28

PROOF OF SERVICE

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 years and not a party to the within action. My business address is 825 North Ross, Santa Ana, CA 92701.

On the **8th of August 2011**, I caused a true copy of the following document(s) to be served in this action upon the person(s) set forth below, by the method(s) indicated:

DOCUMENT(S): **DEFENDANT'S CORRECTED SENTENCING POSITION; POINTS AND AUTHORITIES IN SUPPORT THEREOF; EXHIBITS A, B-1, B-2, B-3, B-4, B-5, C and D;**
PARTY(IES): **SEE ATTACHED**
SERVED: **SERVICE LIST**

(XX) **(BY PERSONAL SERVICE)** I caused such **DEFENDANT'S CORRECTED SENTENCING POSITION; POINTS AND AUTHORITIES IN SUPPORT THEREOF; EXHIBITS A, B-1, B-2, B-3, B-4, B-5, C and D;** to be electronically filed with the Office of the Clerk on 8 August 2011.

() **(BY MAIL)**, I am "readily familiar" with the firm's practice of collection and processing correspondence. Under that practice, it would be deposited with the U.S. Mail service on that same day with postage thereon fully prepaid at Santa Ana, California, in the ordinary course of business

() **(BY FEDERAL EXPRESS)** by using express mail service and causing to be delivered overnight next day delivery a true copy thereof to the person(s) at the address set forth above.

() **(BY FACSIMILE)** I caused such document(s) to be transmitted to the addressee(s) facsimile number (213) 894-1634. The facsimile machine I used complied with Rule 2003 (3) and the transmission was complete without error. (AUSA - FAX (714) 338-3708.

() **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(XX) **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on 8th August 2011, at Santa Ana, California .

/S/ Daniel B. Watkins
Daniel B. Watkins

SERVICE LIST

Terri Flynn
Assistant United States Attorney
OFFICE OF THE UNITED STATES ATTORNEY
UNITED STATES DISTRICT COURT
Ronald Reagan Federal Building
411 West Fourth Street
Santa Ana, California 92701
(714) 338-3592

e-filed

OFFICE OF THE CLERK FOR THE
UNITED STATES DISTRICT COURT
Ronald Reagan Federal Building
411 West Fourth Street
Santa Ana, California 92701

e-filed